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Attorney for Petitioner

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

RICARDO MERCADO-GUILLEN,

Petitioner,

vs.

ALEJANDRO MAYORKAS, Secretary of
Homeland Security, et al.,

Respondents (Official Capacities).

No.18-cv-00727-HSG

**JOINT MOTION TO DISMISS
ACTION WITHOUT PREJUDICE
PURSUANT TO FEDERAL RULE OF
CIVIL PROCEDURE 41(a)(2) ;
ORDER**

Detention Status: Non-Detained

1. Petitioner Ricardo Mercado Guillen (“Mr. Mercado”) and Federal Respondents move the Court to dismiss this petition for habeas corpus without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2). Respondent Contra Costa County Sheriff filed a non-opposition to the habeas petition, stating he takes no position on the petition, and that he would not appear in this matter unless ordered by the Court. *See* ECF No. 14.

2. The Court granted the petition on April 19, 2018, finding it directly controlled by *Diouf v. Napolitano* (“*Diouf II*”), 634 F.3d 1081, 1085 (9th Cir. 2011), *abrogated by* *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827 (2022).

*Mercado-Guillen v.
Mayorkas, et al.*

18-cv-00727-HSG

Joint Motion to Dismiss Without Prejudice

1
2 3. Federal Respondents timely appealed the Court's order to the Ninth Circuit.
3 The parties agreed to hold the matter in abeyance due to parallel litigation involving the
4 question at issue in this matter. Ultimately, Petitioner and Federal Respondents jointly
5 moved the Ninth Circuit to vacate and remand the Court's order because of the Supreme
6 Court's intervening decision in *Arteaga-Martinez*.
7

8 4. The Ninth Circuit granted the motion on July 26, 2023, vacated this Court's
9 order, and remanded for further proceedings. The mandate issued on September 18, 2023.

10 5. Petitioner and Federal Respondents now move for dismissal of this action
11 without prejudice.
12

13 6. Immigration and Customs Enforcement ("ICE") has agreed not to re-arrest
14 Petitioner unless there is a change in circumstances..

15 7. The parties have further agreed that each party will bear its own costs and fees
16 in this litigation, and Petitioner will not seek attorneys' fees pursuant to the Equal Access to
17 Justice Act, 28 U.S.C. § 2412, or any other provision of law.
18

19 8. In light of the foregoing, the parties request the Court dismiss this petition
20 without prejudice.

21 Dated: September 19, 2023

22 Respectfully submitted,

23 **FUERZA IMMIGRATION LAWYERS LLP**

24 /s/ Kevin M. Crabtree

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Attorney for Petitioner

ISMAIL J. RAMSEY
United States Attorney

/s/ Adrienne Zack¹
ADRIENNE ZACK
Assistant United States Attorney


Attorneys for Federal Respondents

ORDER

Having considered Petitioner and Federal Respondents' joint motion for dismissal, and in light of Respondent Sheriff of Contra Costa County's statement he takes no position in this matter, this action is dismissed without prejudice.

SO ORDERED.

Dated: 9/20/2023


HAYWOOD S. GILLIAM, JR.
United States District Judge

¹ Petitioner's counsel has received the permission of Federal Respondents' counsel to attach her electronic signature.

Mercado-Guillen v.
Mayorkas, et al.